

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOSEPH FINCH,

Petitioner,

Case Number: 2:20-CV-11463

v.

HON. VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER DISMISSING CASE WITHOUT PREJUDICE

Joseph Finch is confined in the Federal Correctional Facility in Milan, Michigan. He is serving a sentence, imposed by the United States District Court for the Western District of Missouri, of 188 months imprisonment to be followed by five years supervised release. *See United States v. Finch*, No. 6:16-cr-03103. On May 27, 2020, he commenced this action by filing an “Ex Parte Motion for Extension of Time to File (28 U.S.C. § 2241) ‘Actual Innocence’ Claim.” (ECF No. 1.) The motion seeks an extension of time to file a habeas corpus petition. Because the Court may not decide a motion for extension of time in the absence of a properly filed petition, the Court will dismiss the case without prejudice.

The motion was docketed as a petition for a writ of habeas corpus. But the filing of a motion is insufficient to initiate a federal habeas corpus proceeding. A party may commence a civil action in federal court by filing a complaint. Fed. R. Civ. P. 3. The Federal Rules of Civil Procedure apply to habeas suits unless they are inconsistent with

the Habeas Corpus Rules, and “[n]othing in the Habeas Corpus Rules contradicts Rule 3.” *Woodford v. Garceau*, 538 U.S. 202, 208 (2003). “The logical conclusion, therefore, is that a habeas suit begins with the filing of an application for habeas corpus relief – the equivalent of a complaint in an ordinary civil case.” *Id.*

The Court may not decide Finch’s motion because Finch has not properly commenced a habeas corpus proceeding. The judicial power of federal courts is limited to “cases and controversies.” See U.S. CONST. art. III, § 2, cl. 1. A judicial decision rendered in the absence of a case or controversy is advisory, and ““a federal court [lacks] the power to render advisory opinions.”” *United States National Bank of Oregon v. Independent Insurance Agents of America*, 508 U.S. 439, 446 (1993) (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)). “[N]o case or controversy generally exists before an actual § 2254 petition is filed.” *United States v. Thomas*, 713 F.3d 165, 168 (3d Cir. 2013) (citation omitted). “Federal courts do not lightly grant relief in non-existent cases. Still less do they offer advisory opinions about what they might do if an action were filed.” *United States v. Asakevich*, 810 F.3d 418, 420-21 (6th Cir. 2016) (holding that district court could not rule on prisoner’s motion for extension of time to file a motion under 28 U.S.C. § 2255 before a motion was actually filed because that would amount to an advisory opinion for an action not yet in existence). Finch’s motion is comparable to a request for an advisory opinion on whether he could obtain an extension of time for a petition not yet in existence and one that may never come into existence. Federal courts do not “offer advisory opinions about what they might do *if* an action were filed.” *Id.*

(emphasis in original).

Because Finch does not currently have a habeas petition pending, his request for an extension of time is premature and must be dismissed for lack of jurisdiction. If Finch wishes to initiate a § 2241 petition, he must do so by filing a petition in accordance with the Federal Rules of Civil Procedure and Rules Governing Section 2254 Cases.

The Court ORDERS the case DISMISSED WITHOUT PREJUDICE.

s/ Victoria A. Roberts
VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

Dated: 9/21/2020